

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RODNEY WILLIAMS,

Plaintiff,

-v-

9:17-CV-709
(DNH/DJS)

BRIAN MCGIBBON,¹ Correction Officer, Franklin Correctional Facility; SANDRA ROUSSELL, Industrial Supervisor, Franklin Correctional Facility, Industrial Tailor Shop 1; and JOHN DOE, Escorting Correctional Officer on August 25, 2016, Franklin Correctional Facility,

Defendants.

APPEARANCES:

RODNEY WILLIAMS
Plaintiff pro se
10-A-3938
Livingston Correctional Facility
P.O. Box 91
Sonyea, NY 14556

BARBARA D. UNDERWOOD
Attorney General for the State of New York
Attorney for Defendants
The Capitol
Albany, NY 12224

MATTHEW P. REED, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

¹ The Clerk is directed to amend the docket to reflect the proper spelling of this defendant's last name as McGibbon.

DECISION and ORDER

Pro se plaintiff Rodney Williams brought this civil rights action pursuant to 42 U.S.C. § 1983. On May 7, 2018, the Honorable Daniel J. Stewart, United States Magistrate Judge, advised by Report-Recommendation that defendants McGibbon and Roussell's motion to dismiss be granted and the complaint be dismissed as against them. Magistrate Judge Stewart also ordered the New York State Attorney General's Office to produce information regarding the identity of the John Doe defendant, against whom the only remaining claim (for Eighth Amendment excessive force) would remain. The Office has since complied and identified the individual as Correction Officer Bernard Bradley.

Plaintiff filed a myriad of documents following the issuance of the Report-Recommendation. Those filings have been construed as objections to the Report-Recommendation and have been considered. Based upon a de novo review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Further, plaintiff requests leave to file an amended complaint regarding his Eighth Amendment failure to protect claims against defendants McGibbon and Roussell "to state more clearly the fact of the matter and to remove from complaint my explanation on personal feelings." ECF No. 36. Pro se plaintiffs are generally afforded an opportunity to amend or to be heard prior to dismissal. Abbas v. Dixon, 480 F.3d 636, 639 (2d Cir. 2007). However, leave to amend pleadings may be denied when amendment would be futile. Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000).

Plaintiff was heard in opposition to defendants' motion to dismiss. After being provided an extension of time in which to oppose the motion, plaintiff filed a nineteen page

memorandum of law in opposition along with an "appendix of cases." Magistrate Judge Stewart's thorough analysis of the objective and subjective prong requirements of an Eighth Amendment failure to protect claim demonstrates that any amendment by plaintiff on this claim would be futile. Therefore, plaintiff's request to file an amended complaint will be denied.

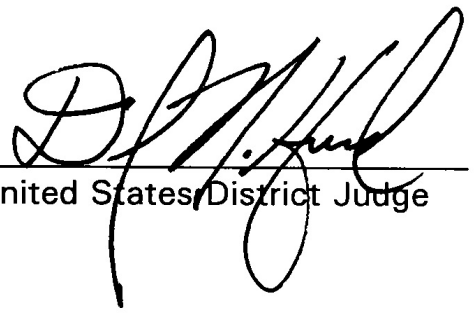
Plaintiff has also requested that the caption be amended and Correction Officer Bernard Bradley be substituted in place of the John Doe defendant in accordance with the New York State Attorney General Office's identification of said defendant. ECF No. 37. Plaintiff's request will be granted and the Clerk is directed to add defendant Correction Officer Bernard Bradley to the docket and direct the U.S. Marshal to effectuate service.

Therefore, it is

ORDERED that

1. Defendants' Brian McGibbon and Sheila Roussell's motion to dismiss is GRANTED;
2. The complaint is DISMISSED as to defendants Brian McGibbon and Sheila Roussell;
3. Plaintiff's motion to file an amended complaint, ECF No. 36, is DENIED; and
4. Plaintiff's motion to replace defendant John Doe with Correction Officer Bernard Bradley, ECF No. 37, is GRANTED and the Clerk is directed to do the same and order service of process.

IT IS SO ORDERED.



United States District Judge

Dated: September 11, 2018
Utica, New York.